TOPICAL INDEX

Page

1. Respondent's Statement of the Case says that a piece of vessel's gear, a stopper clamp, "gave way" as a result of a defect which was "hidden from view" 1

2. Respondent would have this court believe that protection of individual longshoremen is not involved in this case 3

3. The questions presented are not well settled as respondent states 4

4. The decision of the court below is erroneous and respondent has stated nothing in support of the decision 4

Conclusion 6

TABLE OF AUTHORITIES CITED

Miscellaneous

Safety and Health Regulations for Longshoring

Section 9.52 5

Section 9.52(b)(3) 3

IN THE

Supreme Court of the United States

October Term, 1967

No. 398

THOR-DAHL A/S

Petitioner,

vs.

CRESCENT WHARF & WAREHOUSE COMPANY, a corporation,

Respondent.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI IN THE SUPREME COURT OF THE UNITED STATES

PETITIONER'S REPLY BRIEF

Petitioner submits this reply in the interest of clarifying several gross misconceptions in Respondent's Brief in Opposition to Petition for Writ of Certiorari in the Supreme Court of the United States. The points which petitioner believes should be clarified are set forth in chronological order below:

1. *Respondent's Statement of the Case says that a piece of vessel's gear, a stopper clamp, "gave way" as a result of a defect which was "hidden from view".* The stopper clamp did not give way or break. The topping

lift cable merely slipped through the stopper clamp when the stevedoring company lost control of the cable as it surged or eased off on the cable to shift the strain from the deck cleats to the stopper. The cable could have slipped through the clamps only because the stevedoring company did not properly tighten the butterfly nut on the clamps or because a build-up of paint and grease on the faces of the clamps prevented the clamps from properly closing and gripping the cable.[1] Since the jury found against the shipowner, it is conceded for purposes of this appeal that paint and grease prevented the clamps from properly closing.

Further, paint and grease on the face of the stopper clamp would not be "hidden from view" if one looked closely. True, foreign matter between the faces of the clamps would not be "obvious upon a cursory inspection," particularly when such inspection was limited to merely looking at the outside of the clamps as was done in this case.[2] However, by looking closely or taking a few seconds to back off a couple of turns of the butterfly nut on the clamps and swing open the clamps, anything

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[1]At trial, a retired United States Coast Guard officer with many years experience investigating marine accidents, testified that he had inspected and tested the stopper about 24 hours after the accident and found "absolutely nothing wrong with it". R.Tr. 377. There was extensive evidence that the stopper was in good working condition before and after the accident without any change or repairs having been made to the stopper. R.Tr. 274-6, 290, 323, 362-3, 393, 407. The stevedoring company's contention has always been that a build up of paint and grease on the faces of the clamps prevented them from properly closing and gripping the cable. R.Tr. 120, 152.

[2]R.Tr. 51.

between the faces of the clamps would readily become apparent.

2. *Respondent would have this court believe that protection of individual longshoremen is not involved in this case.* Respondent confuses legal rights of the longshoreman after he has been injured with protecting him from injury in the first instance. Protection of the longshoreman from injury is definitely involved in this case and the question presented is of critical importance to the proper administration and achievement of the objectives of the Longshoremen's and Harbor Workers' Safety Program, namely preventing accidents. At issue is whether the stevedoring company, the party best situated to reduce the accident rate among longshoremen, shall be held responsible and deemed to have breached its warranty of workmanlike service for its failure to comply with federal safety regulations. Equally at issue is whether a state court can lessen or alter safety requirements established by the federal government pursuant to act of Congress.

This case presents a classic example of an accident which would have been prevented if the stevedoring company had complied with the safety regulations.[3] The stevedoring company would have discovered the paint and grease between the faces of the clamps if it had performed its job in a workmanlike manner and complied

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[3]E.g., "Clamps *shall be* in good condition and free of paint and dirt which would prevent their being drawn tight." Safety and Health Regulations for Longshoring, Section 9.52(b)(3). (*Emphasis supplied.*)

with the safety regulations. The ship's crew regularly used the stopper and only about 12 hours prior to the accident had topped the boom, a job that could not have been performed unless the stopper held properly.[4] The ship had no indication whatsoever that the stopper would not hold the cable. The wisdom of the safety regulation involved which has singled out stopper clamps for special treatment, specifically placing responsibility on the stevedoring company to make certain that clamps are "in good condition and free of paint and dirt which would prevent their being drawn tight," is vividly demonstrated by the accident in this case.

3. *The questions presented are not well settled as Respondent states.* Respondent has not cited one case which involves or even mentions the federal safety regulations. Without exception, all of the cases cited by Respondent are inapposite. None of the cases decide, nor even discuss, whether the absolute duty imposed on the stevedoring company by the safety regulations extends the stevedore's duty in certain instances, such as in respect to stopper clamps,[5] beyond that of making a "cursory inspection". Thus, the court is presented with a novel and important question.

4. *The decision of the court below is erroneous and Respondent has stated nothing in support of the decision.* Since the federal safety regulations specifically require the use of "clean clamps" and not merely a "cur-

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[4]R.Tr. 282, 362-3.

[5]See Footnote 3, *supra*.

sory inspection," and since a cursory inspection will not reveal the presence of paint and dirt between the faces of the clamps, *a fortiori* a decision upholding a jury instruction advising the jury that only a cursory inspection is required is manifestly erroneous. The cases cited by Respondent[6] that have stated that a cursory inspection is sufficient have apparently led the courts below to believe such a rule applies even in a situation expressly covered by the safety regulations, despite the absolute requirements of the regulations to the contrary[7] and the clear language therein that "Gear which does not comply with the following requirements shall not be used".[8]

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[6]None of which concerned the Safety and Health Regulations for Longshoring.

[7]See Footnote 3, *supra*.

[8]Safety and Health Regulations for Longshoring, Section 9.52. See Appendix B, p. 29, of Petition for Certiorari.

CONCLUSION

In view of the importance of the issues and the need for a decision on the subject, this petition for a Writ of Certiorari should be granted.

August 26, 1967.

Respectfully submitted,

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